In the High Court of Punjab and Haryana, Chandigarh

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C.W.P. No.902 of 2004

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Date of decision:20.2.2007

B.P. Bansal

.....Petitioner

v.

Punjab State Federation of Co-operative Sugar Mills Ltd. and another

.....Respondents

....

Coram: Hon'ble Mr. Justice S.S. Nijjar
Hon'ble Mr. Justice S.S. Saron

Present: Mr. Ramesh Kumar, Advocate for the petitioner.

Mr. Vijay Kaushal, Advocate for the respondents.

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S.S. Saron, J.

The petitioner was appointed as Chief Engineer, Co-operative Sugar Mills in terms of letter dated 27.7.1998 (Annexure-P.1) by the Punjab State Federation of Cooperative Sugar Mills Ltd. (`Sugarfed' – for short) (respondent No.1). In terms of Clause 4 of the appointment letter he was to be on probation for a period of one year from the date of joining which may be extended for a further period as prescribed under the Punjab State Cooperative Sugar Mills (Common Cadre) Service Rules, 1981 (`Rules' – for short), which governed his service conditions. The petitioner joined the service of Sugarfed on 16.12.1998 and his one year probation period expired on 15.12.1999. The same was, however, extended by six months

vide order dated 31.12.1999 (Annexure-P.3). The petitioner has submitted that he had completed the probation period of one year on 15.12.1999 and as it was not extended by the said date, therefore, it is deemed to have been successfully completed. The Sugarfed, however, vide letter dated 24.2.2000 (Annexure-P.4) issued a show cause notice to the petitioner on the basis of a preliminary inquiry conducted in pursuance of directions issued by the Managing Director, Sugarfed on 28.12.1999 (Annexure-P.2). In terms of the directions, the Managing Director, Sugarfed had ordered its Technical Adviser (ST) to conduct a thorough preliminary inquiry with regard to letter dated 20.12.1999 received from the Managing Director of the Zira Cooperative Sugar Mills Ltd., Zira. The same was with respect to breakdown of the Sugar Mill during the crushing season. The petitioner submitted his reply dated 9.3.2000 (Annexure-P.5) to the show cause notice dated 24.2.2000 (Annexure-P.4). The Sugarfed thereafter by the impugned order dated 31.5.2000 (Annexure-P.6) during the extended period of probation of the petitioner terminated his services in terms of Clause 5 of his appointment letter dated 27.7.1998 (Annexure-P.1). The petitioner aggrieved against the said order preferred an appeal (Annexure-P.7). The Chairman, Sugarfed on behalf of the Board of Directors, Sugarfed by order dated 20.9.2002 (Annexure-P.9) allowed his appeal. It was held that by treating the petitioner on probation his services could not have been terminated without resorting to a preliminary inquiry, show cause notice and reply thereto, during his probation which expired on 15.12.1999 as the breakdown in the sugar mill took place from 10.12.1999 to 22.12.1999. Besides, the probation period of the petitioner could not have been extended

for another six months upto 31.5.2000 and then terminating his service on 31.5.2000. Accordingly, the petitioner was ordered to be brought to his original position which he was occupying before his termination from service. Till the inquiry was completed it was ordered that the petitioner be placed under suspension and after completion of inquiry and its finding the Sugarfed may go ahead according to its Service Rules. The Sugarfed aggrieved against the order of the Board of Directors of Sugarfed preferred a revision petition under Section 69 of the Punjab Cooperative Societies Act, 1962 before the Additional Registrar (Administration), exercising the powers of the Registrar, who vide order dated 30.10.2003 (Annexure-P.12) accepted the petition and set aside the order dated 20.9.2002 (Annexure-P.9) of the Board of Directors of the Sugarfed. The petitioner by way of the present petition under Articles 226/227 of the Constitution of India seeks quashing of the order dated 31.5.2000 (Annexure-P.6) whereby he was terminated from service and the order dated 30.10.2003 (Annexure-P.12) whereby the appeal of Sugarfed against the order of the Board of Directors of Sugarfed dated 20.9.2002 (Annexure-P.9) has been accepted.

Reply has been filed on behalf of the Sugarfed. It is submitted that the services of the petitioner have been terminated during the probation period as per condition No.5 of his appointment letter (Annexure-P.1). There is no illegality in the order of termination and the writ petition is liable to be dismissed. The probation period of the petitioner, it is submitted, could be extended in terms of Clause 4 of his appointment letter (Annexure-P.1). The order terminating the services, it is submitted, does not show that it is stigmatic. The conduct of preliminary inquiry was only

to ascertain the actual position and it in no way caused any prejudice to the petitioner. Such an inquiry is permissible and there is no illegality in resorting to the holding of a preliminary inquiry. The order passed by the Additional Registrar, Cooperative Societies, exercising the powers of Registrar, has been stated to be valid. Therefore, it is submitted that the writ petition merits dismissal.

We have heard learned counsel for the parties and perused the record. Learned counsel for the petitioner submits that the probation period of the petitioner had expired on 15.12.1999 and on its expiry the petitioner is deemed to be a confirmed employee. Therefore, the action of the respondents in subsequently extending the probation period by six months vide order dated 31.12.1999 (Annexure-P.3) was improper and illegal. In any case, it is contended that the termination of services of the petitioner during the period of probation though appearing on its face to be innocuous is in fact punitive in nature inasmuch as it is based on the inquiry that had been conducted with regard to breakdown of the Zira Cooperative Sugar Mill during the crushing season. Therefore, the same, in any case, is liable to be invalidated. In support of his contentions learned counsel for the petitioner has placed reliance on the case of V.P. Ahuja v. State of Punjab and others, AIR 2000 SC 1080 and two Division Bench judgments of this Court in Munshi Ram v. Presiding Officer, Labour Court and another, 2002-III-LLJ 115 and The Haryana State Cooperative Apex Bank Ltd. v. Sat Narain, (1996-1) PLR 399.

In response, learned counsel for the respondents submits that after the expiry of the probation period of the petitioner there is no

automatic or deemed confirmation of his service. Besides, it is submitted that the order dispensing with the service of the petitioner is an innocuous order which has been passed during his probation period. The same is in no manner stigmatic.

We have given our thoughtful consideration to the matter. The petitioner was appointed as Chief Engineer of the Cooperative Sugar Mills by the Sugarfed in terms of appointment letter dated 27.7.1998 (Annexure-P.1). Clause 4 of his appointment letter provided that the petitioner would be on probation for a period of one year from the date of joining which may be extended for a further period as prescribed under the Rules. Rules 2.52, 2.53 and 2.54 of the Rules which relate to the probation period of employees of the Mills, which means a member of the Co-operative Sugar Mills and includes the Sugarfed, read as under:-

> "Probation:
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> 2.52Every person appointed to any category otherwise than by transfer on deputation, shall be required to be on probation initially for a period of one year from the date of appointment.
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> 2.53 The Chief Executive Officer may in his discretion, extend the period of probation for a further period not exceeding one year.
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> 2.54 During the period of probation or extension thereof, the services of an employee directly recruited may be terminated without notice, and an employee appointed on promotion from a lower post may be reverted to the post, by

the Chief Executive Officer, without notice."

A perusal of the above Rules shows that after completion of the initial probation period it may be extended for a further period not exceeding one year. In the present case the probation period of the petitioner was extended by six months after the expiry of the initial one year probation period. Therefore, the petitioner, in any case, cannot claim to have been automatically confirmed on the expiry of the initial one year probation period. In High Court of M.P. v. Satya Narayan Jhavar, (2001) 7 SCC 161, it has been observed as follows:-

> "The question of deemed confirmation in service jurisprudence, which is dependent upon the language of the relevant service rules, has been the subject-matter of consideration before this Court, times without number in various decisions and there are three lines of cases on this point. One line of cases is where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation. The other line of cases is that where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such

> cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry the order of termination has not been passed. The last line of cases is where, though under the rules maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person concerned passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired."

In the present case in the letter of appointment of the petitioner dated 27.7.1998 (Annexure-P.1), it has been provided in Clause 4 that the petitioner would be on probation for a period of one year from the date of joining which may be extended for a further period as prescribed under the Rules. There is no stipulation in the appointment letter providing for automatic or deemed confirmation after expiry of the period of one year probation. In terms of the Rules and the letter of appointment the present is not a case where beyond the probation period that has been provided it is not permissible to extend the same. The conditions of appointment of the petitioner provide for extension of the period of probation. A case for deemed confirmation may have been raised by the petitioner in case he had successfully completed the extended period of probation which has not been completed. In fact, his services have been dispensed with during the

extended period of probation. Condition No.5 of the appointment letter (Annexure-P.1) rather provides that during the period of probation or extended period thereof his services would be liable to termination without any notice and that he would not be entitled to an increment until the successful completion of probation. In the circumstances, the contention of the learned counsel for the petitioner that there is deemed confirmation on the expiry of the period of probation on 15.12.1999 is devoid of any merit. It is during the extended period of probation by six months that the services of the petitioner have been terminated which is in accord with the rules and the conditions of his appointment. It is not as if on the completion of the initial period of probation of the petitioner on 15.12.1999 that he is deemed to be confirmed. It takes the authorities time to assess the circumstances and take a conscious decision whether the period of probation is to be confirmed or extended. The probation period was extended by six months by order dated 31.12.1999 (Annexure-P.3) which is within a reasonable time after 15.12.1999.

The next question that would, however, require to be considered is whether the order dispensing with the service of the petitioner during his probation period is punitive in nature. In the impugned order of termination dated 31.5.2000 (Annexure-P.6) it has been stated that the services of the petitioner are hereby terminated without any notice with immediate effect in terms of Clause 5 of his appointment letter dated 27.7.1998 (Annexure-P.1). The petitioner filed an appeal (Annexure-P.7) before the Chairman of the Board of Directors of Sugarfed against the said order dated 31.5.2000 (Annexure-P.6). The Sugarfed (respondent No.1)

filed reply (Annexure-P.8) to the said appeal in which it was stated that the order terminating the service of the petitioner is a simpliciter order of termination and no stigma whatsoever has been caused to the appellant. The appeal of the petitioner was accepted by the Board of Directors of Sugarfed vide order dated 20.9.2002 (Annexure-P.9). However, a revision petition (Annexure-P.11) was filed by Sugarfed which was accepted by the Additional Registrar (Admn.), Co-operative Societies, Punjab (respondent No.2) (exercising the powers of Registrar) vide order dated 30.10.2003 (Annexure-P.12).

The case set-up by the petitioner on the strength of the judgment of the Supreme Court in V.P. Ahuja's case (supra) and two Division Bench judgments of this Court in Munshi Ram's case (supra) and Haryana State Cooperative Apex Bank Limited v. Sat Narain (supra) is that a preliminary inquiry had been conducted in which the conduct of the petitioner was examined and it is on account of his such conduct or misconduct that his services have been terminated. This, according to the learned counsel, makes the termination order stigmatic and, therefore, punitive. In V.P. Ahuja's case (supra) it was held by the Supreme Court that a probationer or a temporary servant is also entitled to certain protections and his services cannot be terminated arbitrarily nor can they be terminated in a punitive manner without complying with the principles of natural justice. There is no dispute to the said proposition. However, in the said case the termination order was founded on the ground that the probationer had failed in the performance of his duties administratively and technically. Therefore, ex facie the order terminating the service of the probationer

therein was found to be stigmatic. In the circumstances, it was held that such an order could not have been passed without holding a regular inquiry and giving an opportunity of hearing to the probationer. In Munshi Ram's case (supra) a Division Bench of this Court from the record of the pleadings and evidence before the Labour court found that the order of termination in the said case appeared to be a termination for acts of omission and commission of the employee therein. The Labour Court on the basis of material had given a finding that the termination order though innocuous but in reality had been passed on account of alleged misconduct of the employee. Accordingly, it was held that the termination was not sustainable as it was effected without any inquiry. In the case of The Haryana State Cooperative Apex Bank Limited v. Sat Narain (supra), a Division Bench of this Court held that if order of discharge even of a probationer is passed based on his misconduct it would not be an order of discharge simpliciter and would be punitive in nature which cannot be passed without affording an opportunity of being heard. There is no dispute to the said propositions. However, the ratio of the said judgments are not applicable to the present case. In cases where an order on the face of it appears to be innocuous the Court is to lift the veil and find the real reason for the termination of an employee during the period of his probation. In case the termination is based on account of some misconduct and without compliance of the principles of natural justice it would have to be invalidated. The overriding test in such cases will always be whether the act complained of is a mere motive or is the foundation of the order. If the misconduct is the motive for the act of termination it would be a case of termination simpliciter but in

case it is the foundation it would be punitive in nature. In Pavanendra Narayan Verma v. Sanjay Gandhi P.G.I. Of Medical Sciences and another, AIR 2002 SC 23, it was held as follows:-

> "One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full scale formal enquiry (b) into allegations involving moral turpitude or misconduct (c) which culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld."

In the present case, the inquiry that was held regarding breakdown of the Zira Cooperative Sugar Mill during the probation period of the petitioner was a preliminary inquiry. On the basis of the preliminary inquiry that was conducted, the petitioner was issued a show cause notice dated 24.2.2000 (Annexure-P.4). It was observed in the show cause notice that a preliminary inquiry regarding breakdown in the Zira Cooperative Sugar Mill from 10.12.1999 to 20.12.1999 and 21.12.1999 to 22.12.1999 was conducted by the Technical Adviser (ST), Sugarfed, Punjab. After going through his report, it was revealed that there were certain mechanical defects as indicated in the show cause notice. The said acts, on the part of the petitioner, it was observed, clearly reflected that he being the head of the Engineering Department of the Mill had not paid proper attention and remained negligent and careless. It was observed that while performing his

duties he had caused financial loss to the Mill. Accordingly, he was directed to show cause as to why disciplinary action should not be taken against him for the acts indicated in the show cause notice. However, before any action was contemplated against the petitioner, he was called upon to explain his position within a period of 15 days from the issue of the show cause notice failing which it was to be presumed that he had nothing to submit in this regard and further action in the matter would be taken against him as per rules. The petitioner submitted his explanation dated 9.3.2000 (Annexure-P.5) in response to the show cause notice dated 24.2.2000 (Annexure-P.4). The Managing Director of the Sugarfed, however, vide impugned order dated 31.5.2000 (Annexure-P.6) terminated the services of the petitioner without any notice and with immediate effect in terms of Clause 5 of his appointment letter dated 27.7.1998 (Annexure-P.1). The effect of holding a preliminary or fact finding inquiry, it has been observed by the Supreme Court in Kendriya Vidyalaya Sangathan v. Arunkumar Madhavrao Sinddhaye and another, (2007) 1 SCC 283 that such an inquiry is not a formal departmental inquiry where non-observance of prescribed rules of principles of natural justice could have the result of vitiating the whole inquiry. The fact that the respondents employees therein were allowed to participate in such preliminary inquiry or some queries were put to certain persons would not alter the nature of the inquiry. In any case, it was observed even though a disciplinary inquiry was recommended on the basis of such preliminary inquiry, the employer instead chose to exercise its right of termination simpliciter under the appointment letter. As the order terminating the services of the respondents therein was wholly

innocuous and not containing any stigma against him and having been passed in terms of the appointment letter, it was observed, that the respondents' services therein were not terminated by way of punishment. Therefore, the mere fact that a preliminary inquiry was conducted against the petitioner in the present case and he was also given an opportunity to explain his conduct would not make the order terminating his service as punitive because the Managing Director of the Sugarfed has chosen to exercise its right to terminate his service simpliciter in accordance with his appointment letter. Besides, the order dated 31.5.2000 (Annexure-P.6) terminating the services of the petitioner is wholly innocuous.

In the circumstances, it is evident that it is not a case where a full scale formal inquiry into the allegations attributed to the petitioner has been conducted. Besides, the allegations do not, in any manner, relate to any kind of moral turpitude or misconduct which culminated in a finding of guilt which is the requirement in terms of the judgment in Pavanendra Narayan Verma's case (supra). Moreover, the preliminary inquiry was in the nature of a fact finding inquiry and a show cause notice was issued to the petitioner to which he filed his reply. However, the Managing director chose to exercise its right of termination simpliciter without resort to a regular departmental inquiry. The order of termination is also innocuous. In fact the Sugarfed from the very beginning has been taking the stand that the order of termination of the services of the petitioner is innocuous. In the reply (Annexure-P.8) filed to the appeal (Annexure-P.7) before the Board of Directors of Sugarfed the stand taken by the respondent-Sugarfed is that the order of termination is a simpliciter order of termination and no stigma

whatsoever has been caused to the appellant. Even in the reply filed to the present petition, it has been stated that no stigmatic order has been passed against the petitioner and the termination order has been passed in terms of Clause 5 of the appointment letter. The conduct of preliminary inquiry, it is stated, was only to ascertain the actual position and it is no way caused prejudice to the petitioner. In the circumstances, the termination of the petitioner during his period of probation is not shown to be unfair or arbitrary and the employer has a right to judge the suitability of its employee on the basis of material before it. Besides, as already observed, the present is not a case relating to the allegations involving moral turpitude or misconduct which culminated in a finding of guilt.

For the foregoing reasons, we are of the view that the writ petition is devoid of any merit and is accordingly dismissed.

(S.S. Nijjar)
Judge

February 20, 2007.

(S.S. Saron)
Judge

hsp

NOTE: Whether to be referred to Reporter or not: Yes